

SHOUT OUT

A Triple Play for Securities Litigators at Wilson Sonsini

By Jenna Greene

May 11, 2017

Good things come in threes for securities litigators at Wilson Sonsini Goodrich & Rosati, who racked up three wins in less than a week.

The most intriguing came Thursday on behalf of identity theft protection company LifeLock Inc. before the U.S. Court of Appeals for the Ninth Circuit.

The appellate panel rejected allegations of misconduct against the lower court judge by plaintiffs counsel from Pomerantz LLP and Martin & Bonnett.

The plaintiffs said that U.S. District Judge Susan Bolton of the District of Arizona “engaged in prohibited factfinding and in essence usurped the rule of a jury and ‘tried the case’ in the guise of applying the [Private Securities Litigation Reform Act]—serious charges if true,” wrote the panel—Senior Judge Stephen Trott, Judge Sandra Segal Ikuta and U.S. District Judge David Faber of the Southern District of West Virginia, sitting by designation—in an unpublished memorandum. “But they are not.”



Photo: Jason Dwy/ALM

Wilson Sonsini Goodrich & Rosati.

The panel continued, “Judge Bolton did no more than assiduously examine Plaintiffs’ pleadings and all the reasonable inferences they support to determine whether their complaint satisfied the rigorous and unusual test mandated by Congress in this specialized area of the law.”

They were equally as surefooted in disposing of the alleged securities law violations.

The plaintiffs claimed that LifeLock failed to disclose information in its 2013 Form 10-K related to its compliance with a 2010 settlement with the

Federal Trade Commission that required the company to secure consumers' personal information and prohibited it from deceptive advertising.

In December 2015, the company agreed to pay a record pay \$100 million to settle FTC contempt charges that it violated the terms of the settlement.

But that wasn't enough to make the securities law claims stick.

"[A]bsent from this case is any direct evidence of intentional wrongdoing, or scienter. Plaintiffs' case depends upon inferences they ask us to draw," the panel found. "Here, and in this context, we do not regard the facts allegedly omitted as materially affecting what was disclosed because a reasonable investor would not view those facts as changing the "total mix" of information available."

The Wilson Sonsini team was led by partners Boris Feldman and Gideon Schor and of counsel Cheryl Fount.

Lawyers from Wilson Sonsini on Thursday also prevailed in the Court of Chancery of the State of Delaware.

That case arose out of the merger of Cyan Inc. and Ciena Corporation, which closed in August 2015. Former Cyan stockholders received shares of Ciena common stock and cash.

Represented by Faruqi & Faruqi; Ridrosky & Long and Levi & Korsinsky, the plaintiffs claimed that the members of Cyan's board breached their fiduciary duties in approving the merger, and also sought equitable relief in the form of quasi-appraisal.

"[P]laintiffs have failed to plead sufficient facts to support a reasonable inference that a majority of Cyan's board was interested in the transaction or acted in bad faith," Chancellor Andre Bouchard found. "Because plaintiffs have failed to identify any material misrepresentation or omission in Cyan's proxy statement, or to allege any other viable claim for a fiduciary breach, there is no basis to impose a quasi-appraisal remedy in this case."

The Wilson Sonsini team was led by partners Bradley Sorrels, Boris Feldman and Ignacio Salceda, with assistance from associates Ian Liston, Andrew Berni, Jessica Montellese and Aaron Benjamin.

On May 5, the Ninth Circuit affirmed the dismissal of a securities class action filed against Align Technology, maker of the Invisalign teeth aligning system. It was the first time the Ninth Circuit has ruled that the U.S. Supreme Court's ruling in *Omnicare, Inc. v. Laborers Dist. Council Constr. Ind. Pension Fund*, which articulated the standards for pleading falsity of opinions, applies to Section 10(b) fraud claims of the Securities Exchange Act of 1934.

The Wilson Sonsini team representing Align Technology in the matter was led by partner Caz Hashemi and included partner Kelley Kinney and associates Nick Miller and Ben Tolman.

Contact **Jenna Greene** at jgreene@alm.com. On Twitter @jgreenejenna.